

a moment, against public opinion, to set the gold standard and set us apart.

We have been known as the nation of Nuremberg. My fear is now we will be known as the nation of Guantanamo, and I worry about that.

Mr. WARNER. We have our differences, if I may say, but that was a war of state-sponsored nations and aggressions, men wearing uniforms, men acting at the direction of recognized governments. Today's war is a disparate bunch of terrorists, coming overnight, no uniforms, no principles, guided by nothing. We are doing the best we can as a nation, under the direction of our President, to defend ourselves.

Mr. DODD. If our colleague would yield, I do not disagree, but I don't think there is a choice between upholding the principles of America and fighting terrorism. Every generation of Americans will face their own threats. This is ours. Every previous generation faced serious threats, and they did not abandon the principles upon which this country is founded. I am fearful we are going to do that today.

Mr. WARNER. I disagree with my friend, and I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. For this little conclusion, I will use leader time.

I ask unanimous consent that 5 minutes from Senator ROCKEFELLER and Senator KENNEDY—they both have a half hour on their respective amendments—be transferred to Senators CLINTON and JOHN KERRY. They will each have 5 minutes to speak. And that I have 12 minutes under my control remaining on the bill and that time be equally divided between Senators FEINSTEIN and FEINGOLD. They will each have 6 minutes to speak on the bill.

Mr. WARNER. Madam President, reserving the right to object, and I will not object, but I listened carefully. You courteously advised me that this request works within the confines of the standing unanimous consent, is my understanding, in terms of the allocation of time.

Mr. REID. This adds no time to the bill.

Mr. WARNER. That is correct. I wanted to make that clear to my colleagues.

Mr. LEAHY. Reserving the right to object. I shall not, of course. As a matter of clarification, there is still some specific time reserved to the Senator from Vermont; is that correct?

The PRESIDING OFFICER. There remains 23 minutes on the bill.

Mr. REID. That is 23 minutes, plus the good offices of Senator SPECTER may give the Senator additional time.

Mr. LEAHY. Thank you.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

#### MILITARY COMMISSIONS ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 3930, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes.

Pending:

Specter amendment No. 5087, to strike the provision regarding habeas review.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, just for purposes of advising colleagues, there remains on the Specter amendment 16 minutes under the control of the Senator from Virginia. I desire to allocate about 4 minutes to Senator KYL, 2 to 3 minutes to Senator SESSIONS, and to wrap it up, 2 to 3 minutes to Senator GRAHAM. But we will alternate or do as the Senator from Michigan—you have 33 minutes, I believe, under the control of Senator SPECTER and those in support of his amendment.

Mr. LEVIN. Madam President, parliamentary inquiry: How much time is remaining to Members on this side, including on the bill?

The PRESIDING OFFICER. Senator SPECTER's side controls 33 minutes.

Mr. LEVIN. On the Democratic side?

The PRESIDING OFFICER. Senator WARNER controls 16 minutes, and the proponent of the amendment controls 33.

Mr. LEVIN. And on the bill itself, is there time left?

The PRESIDING OFFICER. Senator REID has allocated the remainder of the debate time on the bill itself.

Mr. LEVIN. All time is allocated?

The PRESIDING OFFICER. Correct.

Mr. LEVIN. Madam President, I ask unanimous consent that I be allowed to proceed for 30 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LEVIN. Madam President, I wish to thank the Senator from Connecticut for one of the most passionate statements I have ever heard on this floor—heartfelt, right on target. The distinctions made in this bill which will allow statements to be admitted into evidence that were produced by cruel treatment is unconscionable. It is said that, well, statements made after December 30 of 2005 won't be allowed, but those that are produced by cruel and inhuman treatment prior to December 30 of 2005 are OK. It is unconscionable. It is unheard of. It is untenable, and the Senator from Connecticut has pointed it out very accurately, brilliantly. I thank him for his statement.

Mr. WARNER. Madam President, we will proceed on Specter's amendment. In due course, I will find the time to comment on my colleague's 30 seconds. I want to keep this thing in an orderly progression. I would like to add the

Senator from Texas, Mr. CORNYN, in the unanimous consent agreement to be recognized as one of the wrap-up speakers on those in opposition to the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, yesterday Senator SPECTER argued that one sentence in the Hamdi opinion that refers to habeas corpus rights as applying to all "individuals" inside the United States indicates that alien enemy combatants have constitutional habeas rights when they are held inside this country. I believe that Senator SPECTER is incorrect, for the following reasons: (1) The Hamdi plurality repeatedly makes clear that "the threshold question before us is whether the Executive has the authority to detain citizens who qualify as 'enemy combatants.'" The plurality expressly frames the issue before it in terms of the rights of citizens no fewer than eight times. It is clear that it is only the rights of citizens that the Hamdi plurality studied and ruled on. (2) Elsewhere the Hamdi plurality criticized a rule that would make the government's right to hold someone as an enemy combatant turn on whether they are held inside or outside of the United States. The plurality characterized such a rule as creating "perverse incentives," noted that it would simply encourage the military to hold detainees abroad, and concluded that it should not create a "determinative constitutional difference." The same effect would, of course, be felt if enemy soldiers' habeas rights were made turn on whether they were held inside or outside of the United States. The fact that the Hamdi plurality rejected this type of geographical gamesmanship in one context casts doubt on the theory that it endorsed it in a closely related context. (3) Had Hamdi extended habeas rights to alien enemy combatants held inside the United States, that would have been a major ruling of tremendous consequence. Because courts typically do not hide elephants in mouseholes, cf. *Whitman v. ATA*, it is fair to conclude that no such groundbreaking ruling is squirreled away in one ambiguous sentence in the Hamdi plurality opinion on the floor Wednesday evening. I presented the argument that the constitutional writ of habeas corpus does not extend to alien enemy soldiers held during wartime. Senator SPECTER responded by quoting from a passage in Justice O'Connor's plurality opinion in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), that he believes establishes that alien combatants are entitled to habeas rights if they are held within the United States. That statement, towards the beginning of section III.A of the court's opinion, is a part of a statement of general principles noting that "[a]ll agree" that, absent suspension, habeas corpus remains available to every "individual" within the United States. Senator